

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

**February 18, 2014 at 2:00 p.m.**

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1. 12-38712-A-13 AMANDO/REMEDIOS NOVICIO MOTION TO  
JPJ-2 DISMISS CASE  
1-23-14 [52]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion correctly notes that the debtor failed to lodge two orders granting valuation motion that were a predicate to plan confirmation. However, the two orders have been lodged, signed and entered. Therefore, the case will remain pending on the condition that the debtor lodge a proposed order confirming the plan with the trustee no later than 14 days from the hearing. If not already lodged or not lodged within 14 days, the case will be dismissed on the trustee's ex parte application.

2. 13-31135-A-13 JOSIE TORRES MOTION TO  
JPJ-2 DISMISS CASE

**Final Ruling:** The trustee has voluntarily dismissed the motion. The case will remain pending.

3. 09-37876-A-13 FRANK/CHRISTINE SANCHEZ MOTION TO  
JPJ-3 DISMISS CASE  
1-9-14 [104]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted.

The plan has a duration of 60 months. The debtor is now in the 55<sup>th</sup> month under the plan. Because one or more claims are higher than assumed by the debtor, it will take 67 to consummate the plan. Local Bankruptcy Rule 3007-1(d) requires that a plan be modified or claim(s) be objected to when the plan is no longer feasible in light of the claims filed by or on behalf of creditors. Despite a reasonable opportunity to do so, the debtor has not sought to modify the plan. This suggests that the debtor either does not intend to confirm a modified plan or does not have the ability to do so. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

**February 18, 2014 at 2:00 p.m.**

4. 13-34282-A-13 KAMIYAR MALEKY  
JPJ-1

MOTION TO  
DISMISS CASE  
1-29-14 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the case will be dismissed.

The debtor has failed to commence making plan payments and has not paid approximately \$1,049.12 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(4).

5. 13-35784-A-13 CHARLES MCNEIL  
JPJ-1

MOTION TO  
DISMISS CASE  
1-31-14 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted pursuant to 11 U.S.C. § 109(g)(1).

First, the debtor has failed to commence making plan payments and has not paid approximately \$100 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(4).

Second, the debtor failed to appear at the meeting of creditors on January 30 as required by 11 U.S.C. § 343. This breach of duty is cause to dismiss the petition. See 11 U.S.C. § 1307(c)(6).

Third, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The debtor failed to provide the trustee with a copy of this return. This failure, and the debtor's inability to demonstrate that the failure to provide the copy to the trustee was due to circumstances beyond the control of the debtor, requires that the case be dismissed.

Fourth, the debtor failed to file Exhibit D to the petition together with a certificate for credit counseling as required by Fed. R. Bankr. P. 1007(b)(3) and 11 U.S.C. § 521(b). The time to file these documents has expired. See Fed. R. Bankr. P. 1007(c). Thus, the debtor has not established eligibility for bankruptcy relief. See 11 U.S.C. § 109(h). This is cause for dismissal.

The failure of the debtor to file the certificate, appear at the meeting of creditors, make plan payments and provide the trustee with the last filed tax return indicates that the debtor has willfully failed to appear before the court in the proper prosecution of the debtor's bankruptcy case. Accordingly, the dismissal of the case is pursuant to section 109(g)(1) of the Bankruptcy Code.